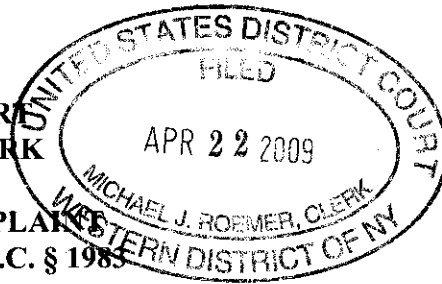


Revised 03/06 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

09 07 0384F

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. Brenda Martinez #0861234

2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper, if you indicate below that you have done so.

1. Albion Correctional Facility

4. _____

2. _____

5. _____

3. _____

6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Brenda Martinez #0861234

Present Place of Confinement & Address: Albion Correctional Facility

3595 State School Road

Albion, New York 14411-9399

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Albion Correctional Facility

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or X Official Capacity

Address of Defendant: 3595 State School Road
Albion, New York 14411-9399

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes _____ No ✓

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

N/A

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ~~shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances.~~

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) January 13, 2009

defendant (give the **name and position held** of each defendant involved in this incident)

Abilene Correctional Facility

did the following to me (briefly state what each defendant named above did):

I tripped on a broken tile while walking into the dorm area of Housing Unit M1, next to the officers station - Bruising and swelling of both knees as well as back spasms were a result.

The constitutional basis for this claim under 42 U.S.C. § 1983 is:

failure to protect

The relief I am seeking for this claim is (briefly state the relief sought):

Punitive Payment for Physical Injury

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes X No If yes, what was the result?

Did you appeal that decision? Yes X No If yes, what was the result?

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so:

A. SECOND CLAIM: On (date of the incident)

2/2/09

defendant (give the **name and position held** of each defendant involved in this incident)

Abilene Correctional Facility

Slipped on water from the ice machine in housing unit M1, there

did the following to me (briefly state what each defendant named above did): I Slipped on water
from the Ice Machine, there were no wet
floor signs and no rug - knees were
re-bruised and back is still in spasms

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? _____ Yes ☒ No If yes, what was the result? _____

Did you appeal that decision? _____ Yes ☒ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

Punitive payment for Physical Injury

Do you want a jury trial? Yes _____ No ☒

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Brenda M. [Signature]
Signature(s) of Plaintiff(s)

To whom it may Concern Feb 9, 2009

I Angela Vega has been on m-1 Since 2/08. I became a unit Porter Around March of 2008.

There are two holes in the tiles entering into our dorm. There is a rug which covers one of them, leaving the other hole exposed. Over the course of the year, I've requested to have it fixed, as of 2/09 nothing has been done.

I saw Brenda Martinez, 0861234 enter the dorm, as she was walking, the front of her shoe caught in the hole causing her to fall. It looked like to me she fell in mid step going down on her knee, face first. Her knee hit first, then the palms of her hands. She was unable to move for almost 10 minutes. Sergeant Elienheimer came in the unit and said "oh I just put a work order in to have that fixed". That was January 13th 2009. As of today 2/9/09 it still hasn't been fixed.

Appended before me February 9, 2009

SHARON L. FOX
Notary Public, State of New York
No. 8005264
Qualified in Orleans County
Commission Expires March 2011

Angela Vega
Angela Vega

2-09-09

To whom it May Concern:

I Yolanda DeJesus's been working as a Porter since Dec/08 at M1, I witness Ms. Brenda Martinez Accident. The whole on the floor has been there since I arrived 12-2-08 They put a rug to cover it since the Accident and nothing's been done to repair it. The Accident occurred on Jan 13, 2009 at 7:45pm she was entering the dorm area when she was walking the tip of her shoe got caught in the hole and she fell on her knee, she was in severe pain. The Sgt was called Sergeant Eliesheimer and he said "oh I just put a work order to have that fixed. as of 2/09/09 it has not been repaired

Sworn to before me this
9th day February, 2009

Thank you.

Karen M. Salamone
Notary Public

KAREN M. SALAMONE
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01SA640718
Qualified in Orleans County
Commission Expires Feb. 6, 2010

Yolanda DeJesus
Yolanda DeJesus